

GOVERNMENT  
OF  
THE CANAL ZONE  

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GEORGE W. GOETHALS

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# GOVERNMENT OF THE CANAL ZONE

THE STAFFORD LITTLE LECTURES

FOR 1915







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# GOVERNMENT OF THE CANAL ZONE

BY

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Governor of the Canal Zone

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# GOVERNMENT OF THE CANAL ZONE

## I

The building of the Panama Canal has been written and talked about as one of the great feats of engineering, and the sanitary work by which yellow fever was banished from the Isthmus has received equal recognition. Little or nothing has been said or heard of the other coordinate branches, such as the housing and feeding of the force; the purchasing, receiving and issuing of construction supplies; the recruiting of labor, both skilled and unskilled; or the controlling of the Zone and preserving order within its limits; yet each was very necessary and important to the

attainment of the end, for the failure of any one would have crippled and delayed the completion of the canal.

The construction of the canal involved the solution of no new engineering problems—simply the application of known principles and methods which experience had shown would give satisfactory results, for the very magnitude of the work precluded trying out anything new or experimental. The task was a formidable one, therefore, because of its size, rather than because of engineering difficulties that were overcome. So, too, in regard to sanitation. With Sir Ronald Ross' discovery of the cause of malaria, which led him to adopt means for its reduction and eradication in Egypt and India, and with Reed, Lazear and Carroll proving the theory that yellow fever is transmitted by the mosquito, and formulating rules which freed Cuba from the ravages of that dread

disease, there remained but the application of the methods followed elsewhere to secure similar results on the Isthmus with respect to these two diseases. The work in Panama developed nothing new. The housing and feeding of the force presented old problems in a new form, made more difficult, however, because of the great numbers employed and the distance from the home markets; similarly with the supply of materials so that construction might proceed unhampered. The reputation of Panama as a pesthole made the recruiting of labor a difficult undertaking, and the difficulty was increased by opposition through edicts and legislation on the part of various Governments both in Europe and the West Indies. But a novel problem in government was presented by the necessity of ruling and preserving order within the Canal Zone. While some experience had been gained in the insular

possessions, a new situation existed which had to be solved, and after various changes there was evolved a form of government which was unique, differing from any established methods of administration.

About a year ago the press announced that a civil government was to be given to the Canal Zone, from which it was assumed that something different from what had existed previously was to be established, and when an army officer was appointed Governor it seemed to be considered a cause for regret that the military was selected in lieu of the civil rule; consequently, a confusion of ideas followed—if there were any ideas on the subject—as to what is the actual status of affairs. An attempt will be made to clear up the situation by outlining the course of civil administration of the Zone through its various changes to the form of government that finally resulted and which was continued

till the Panama Canal Act was made applicable, together with the reasons which led to the adoption by Congress of the establishment that now exists.

The question of an Isthmian canal had been under consideration for years, and while an American company had begun work on a canal by the Nicaraguan route, a French company was the first to begin at Panama the construction of a trans-Isthmian canal on a scale that promised and so far as concerns the work on the Isthmus merited success. Within ten years after the organization of the French company it was forced into liquidation. This was followed by the formation of a new company, but it was difficult to obtain money, and the work carried on by it gradually narrowed down to only such as was necessary to hold the concession that had been granted by Colombia.

In the nineties the United States began

to take a more active interest in an Isthmian canal and the Congress authorized the employment of engineers to investigate first the Nicaraguan route and subsequently both this and the Panama route. In 1901 the engineers reported in favor of the Panama route provided the rights and properties of the New Panama Canal Company could be purchased for the sum of \$40,000,000. Shortly thereafter, Congress, by the act approved June 28, 1902, commonly known as the Spooner Act, authorized the President to acquire from the Republic of Colombia perpetual control of a strip of land across the Isthmus of Panama not less than six miles wide, for the purpose of constructing, maintaining, operating, and protecting a canal, which was to be of sufficient depth and capacity to afford easy passage for ships of the greatest tonnage and draft then in use, or that might reasonably be anticipated,



provided the rights and property of the New Panama Canal Company could be purchased for \$40,000,000. The control of the strip was to include the jurisdiction of the land so transferred as well as of the terminal ports, and the authority to make such police and sanitary rules and regulations as might be necessary to preserve order and public health. In addition, the right was to be secured to maintain and operate the Panama Railroad, which had been constructed by American capital between 1850 and 1855 under a concession from Colombia, provided the United States obtained a majority of the stock.

The same act stipulated that in case satisfactory arrangements could not be made with Colombia or the New Panama Canal Company within a reasonable time and at a reasonable cost, the President was to enter into negotiations with Costa Rica and Nicaragua for the acquisition of the

necessary territory to build a canal by the Nicaraguan route. In either case, the President was to construct the canal utilizing for this purpose the services of the Isthmian Canal Commission, a body created by the act, to consist of at least seven members, at least four of whom were to be engineers, and of these four one was to be an officer of the army and one an officer of the navy. The Commissioners were to be appointed by the President with the advice and consent of the Senate.

In compliance with this enactment, as the New Panama Canal Company was a willing seller of its rights and properties, negotiations were undertaken to secure the strip of land with the necessary control from the Republic of Colombia, and a treaty for the purpose was prepared and agreed to by the representatives of the two Powers, but it failed of ratification by the legislative body of Colombia.

Immediately following this action on the part of the Colombian Government the Province of Panama seceded, its independence was recognized by the United States, and negotiations were entered into with the new republic for the acquisition of the strip needed for the canal, which culminated in the treaty of November 18, 1903. The ratifications of this treaty were exchanged at Washington on February 26, 1904. By its terms, the United States was granted in perpetuity the use, occupation, and control of a strip or zone of land ten miles wide, five miles on either side of the center line of the canal to be constructed, extending across the Isthmus and three marine miles from the mean low water mark into both the Caribbean Sea and the Pacific Ocean. The cities of Colon and Panama and their adjacent harbors were specifically excluded from the grant. In addition such other lands and waters

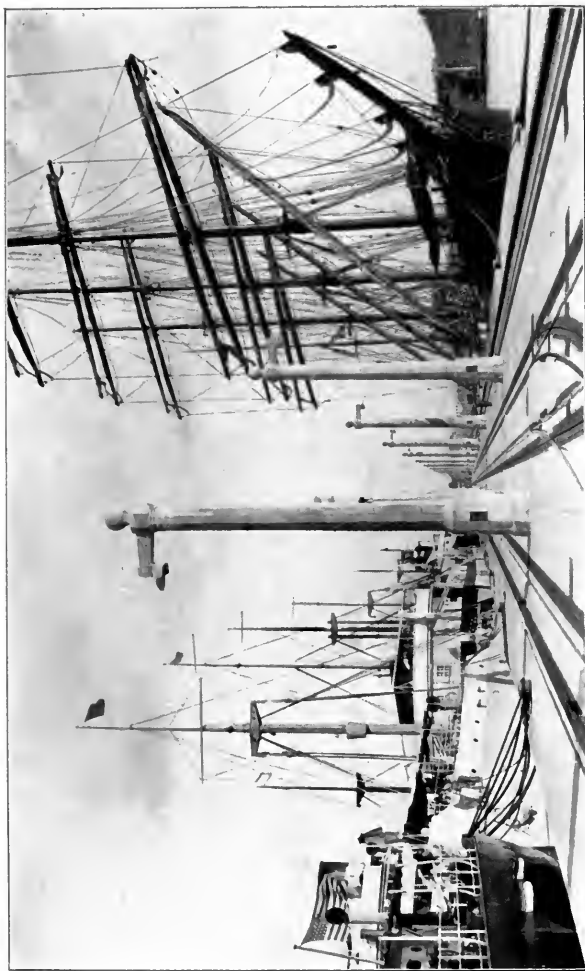
outside the strip described as might be necessary for the construction, maintenance, operation, or protection of the canal or for any of its works were transferred to the United States, together with all islands within the limits of the Zone described, as well as a group of small islands, four in number, in the Pacific. The transfer of sovereignty from the Republic of Colombia to the Republic of Panama vested in the latter all rights which the former held in the Panama Railroad Company, and these rights were transferred to the United States by a specific provision in the treaty.

In this way the United States obtained control of the Canal Zone and of the Panama Railroad. With this control, by the terms of the treaty, the jurisdiction over a number of settlements scattered along the line of the railroad, the population of which was largely Panamanian,

was transferred to the United States authorities. Under the Spooner Act the President was authorized, after the acquisition of the territory, to establish judicial tribunals in order to enforce the rules and regulations which he might deem proper and necessary to preserve order and public health. While this authority was sufficient to permit the establishment of such a form of government as the President might determine, the act of April 28, 1904, specifically provided for the government of the Canal Zone. This law stipulated that until the expiration of the Fifty-eighth Congress (March 4, 1905), unless provision for a temporary Government be sooner made by Congress, all military, civil, and judicial powers, as well as the power to make all rules and regulations necessary for the government of the Canal Zone, and all the rights, powers, and authority granted by the terms of the treaty

to the United States, were to be vested in such person or persons, and exercised in such manner, as the President might direct for the government of the Zone and for maintaining and protecting the inhabitants thereof in the free enjoyment of their liberty, property, and religion.

On March 8, 1904, the President appointed and organized the Isthmian Canal Commission. The property of the New Panama Canal Company was transferred to the United States on May 4, 1904. By letter of May 9, 1904, the President placed the canal, its construction, and all work incident thereto, under the supervision of the Secretary of War, and vested in the Isthmian Canal Commission all the governmental power in and over the Canal Zone by virtue of the authority given him by the acts of June 28, 1902, and April 28, 1904. Among the duties prescribed for the Isthmian Canal Commission he in-



Shipping held at Pedro Miguel locks because of new movement of slide in Culebra Cut. March 10, 1915





cluded the authority to "make all needful rules and regulations for the government of the Zone, and for the correct administration of the military, civil, and judicial affairs of its possessions until the close of the Fifty-eighth Congress." The instructions which the President gave to the Commission relative to the government of the Zone contained the following:

"The inhabitants of the Canal Zone are entitled to security in their persons, property, and religion, and in all their private rights and relations. They should be so informed by public announcement. The people should be disturbed as little as possible in their customs and avocations that are in harmony with principles of well ordered and decent living. . . . The laws of the land, with which the inhabitants are familiar, and which were in force on February 26, 1904, will continue in force in the Canal Zone and in other places on the Isthmus over which the United States has jurisdiction until altered or annulled . . . but there are certain great principles of

government which have been made the basis of an existence as a nation which we deem essential to the rule of law and the maintenance of order, and which shall have force in said Zone. The principles referred to may be generally stated as follows:

“That no person shall be deprived of life, liberty, or property without due process of law; that private property shall not be taken for public use without just compensation; that in all criminal prosecutions the accused shall enjoy the right of a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense; that excessive bail shall not be required nor excessive fines imposed, nor cruel or unusual punishment inflicted; that no person shall be put twice in jeopardy for the same offense, or be compelled in any criminal case to be a witness against himself; that the right to be secure against unreasonable searches and seizures shall

not be violated; that neither slavery nor involuntary servitude shall exist except as a punishment for crime; that no bill of attainder or *ex post facto* law shall be passed; that no law shall be passed abridging the freedom of speech or of the press, or of the rights of the people to peaceably assemble and petition the Government for a redress of grievances; that no law shall be made respecting the establishment of religion or prohibiting the free exercise thereof."

The effect of the foregoing was the establishment of a bill of rights, and the power of the Commission to that extent was restricted, yet the following proviso was added:

"That the Commission shall have power to exclude from time to time from the Canal Zone and other places on the Isthmus, over which the United States has jurisdiction, persons of the following classes who were not actually domiciled within the Zone on the 26th day of February, 1904, viz.: Idiots, the insane, epileptics, paupers, criminals, professional beg-

gars, persons afflicted with loathsome or dangerous contagious diseases; those who have been convicted of felony, anarchists, those whose purpose it is to incite insurrection and others whose presence it is believed by the Commission would tend to create public disorder, endanger the public health, or in any manner impede the prosecution of the work of opening the canal; and may cause any and all such newly-arrived persons or those alien to the Zone to be expelled and deported from the territory controlled by the United States, and the Commission may defray from the canal appropriation the cost of such deportation as necessary expenses of the sanitation, the police protection of the canal route, and the preservation of good order among the inhabitants."

In other words, while certain rights were secured to the individual, the latter was not protected against invasion by the Commission, to which was given a power that could not be exercised by any judicial or executive tribunal in the United States,



New Administration Building, Balboa Heights



except within territory placed under military law. In a community where the inhabitants were liable to constant change there could exist no balance wheel in the form of public sentiment common to all settled communities, and as the work might be seriously hampered by the agitations of one or more persons, such a power was necessary for the good of the whole. Authority was given to the Commission to legislate on all subjects not inconsistent with the laws and treaties applicable to the Zone, such legislative power also to:

“ . . . include the power to raise and appropriate revenues in said Zone; and all taxes, judicial fines, customs duties and other revenues levied and collected in said Zone by or under the authority of said Commission shall be retained, accounted for, and disbursed by said Commission for its proper purposes. The members of said Commission to the number of four or more shall constitute a legislative quorum and all rules and regulations passed and

enacted by said Commission shall have set forth as a caption that they are enacted by the Isthmian Canal Commission 'By authority of the President of the United States'."

A member of the Commission, Major-General George W. Davis, U. S. A., who had had previous experience in Porto Rico and in the Philippine Islands, was appointed Governor of the Canal Zone. It was made his duty to take and maintain possession of the territory including the public land together with the property, real and movable, on the Isthmus of Panama that had been acquired from the Republic of Panama, and to see that the laws were faithfully executed. The Governor was vested with the power to grant reprieves and pardons for offenses against the rules, regulations and laws in force or that might be enacted by the commission; to establish an adequate police force and, in case of an emergency, to call upon any



available military or naval force of the United States for assistance which the military commander was required to render.

The Governor of the Canal Zone reached the Isthmus on May 17, 1904, and two days later announced to the inhabitants of the land ceded by the Republic of Panama that the territory had been occupied by the United States, and that the temporary government over it and its inhabitants had been assumed by him acting for and in the name of the President of the United States. The people were also informed that the laws of the land would be continued in force except where they were found to be in conflict with certain fundamental principles of government that are embodied in the Constitution of the United States whereby specified individual rights are guaranteed. Alcaldes and other officials already in the per-

formance of official duties were instructed to continue in the discharge of their functions.

The treaty of November, 1903, while stipulating certain limits to the extent of territory transferred to the United States, failed to fix definitely the boundaries of the cities of Panama and Colon with their adjacent harbors, and in order to avoid conflict of jurisdiction, the Governor undertook to remedy this defect, with the result that on June 15, 1904, a provisional agreement was made with the authorities of the Republic of Panama setting forth the boundaries between the two Powers. Subsequently Cristobal, on the north, and La Boca (called the port of Ancon), on the south, were announced and established as the terminal ports of the Canal Zone. Colon and Cristobal are contiguous, a street separating one from the other; both front on Limon Bay, a small indentation

in the coast line. On the Pacific side, all shipping from the north and south connects with the Panama Railroad at La Boca; the great bulk of merchandise for Panama coming by way of the Pacific was and is landed on the pier at this locality.

One of the most important functions of government is the power to impose taxes, and this was one of the subjects on which the Commission was authorized to legislate, but its authority could not extend beyond the limits of the Canal Zone. Where legislation would have wider scope, as in the case of customs duties, action by the President was necessary. Consequently, and on recommendation of the Commission, the President of the United States issued an order that the territory of the Canal Zone would be open to the commerce of all friendly nations, and that all articles, goods and wares, not included in the prohibited lists, entering at the es-

tablished ports, would be admitted upon the payment of such customs duties and other charges as were in force at the time and place of their importation. Duties on importations of foreign merchandise into the Canal Zone were to be levied in conformity with the duties Congress had imposed upon such merchandise if imported into ports of the United States, and goods and merchandise entering the Canal Zone from ports of the United States were to be admitted on the same terms as at ports of the States of the Union. The order also directed the Governor of the Zone to make an agreement with the President of Panama by which cooperation would be secured between the customs services of the Canal Zone and the Republic of Panama, so as to prevent frauds and smuggling and to protect the revenue of both Governments. To carry out the provisions of the order, a Di-

vision of Customs and Revenues was established.

With the coming of the Americans the merchants of Colon and Panama feared that their business would be taken from them, for if free trade were established between the Canal Zone and the United States, not only would everything that was needed for the canal be admitted free of duty, but also such merchandise as might be required by the inhabitants of the Zone who had been purchasing their supplies from the dealers in the terminal cities. Competition would be impossible, as the merchants of Colon and Panama were obliged to pay the tariff imposed by the laws of their Government. The executive order confirmed their fears, and they protested vehemently against it. The order would affect also the revenues of the Republic of Panama, consequently its President would not consent to make any agree-

ment with the Governor of the Canal Zone looking to the mutual protection of the customs, but instead took up the matter with the Department of State at Washington.

It was held by the Panamanian authorities that the Republic of Panama had not transferred to the United States the absolute sovereignty of the territory; that it had reserved unto itself the cities of Panama and Colon and their adjacent harbors, and though granting to the United States the free use of these harbors, it had not authorized the Canal Zone Government to set aside a portion of them—which was what had been done when the terminal ports of the Canal Zone were established—and to exercise jurisdiction over such portions. Lacking absolute sovereignty, there could be no right or authority for the Canal Zone to maintain its own fiscal system by the establishment of customs houses, even in ports removed



Street scene Balboa Heights





from those of Panama and Colon, or to collect import duties in any part of the Zone. Objection was also entered to the use by the Zone post offices of stamps differing from those in use in the Republic of Panama; while admitting that a domestic mail service might be established within the limits of the Zone, the extension of such a service to include the forwarding of mails to foreign countries (among them the United States) was not authorized, for this right rested with the Republic of Panama, otherwise the Republic would be deprived of its postal revenues. Attention also was called to the fact that the grant was limited in that it was made for specific purposes—"the construction, maintenance, operation, sanitation and protection of said canal," and its scope could not be extended to other purposes.

The wording of the treaty is peculiar; it provides:

“Article III. The Republic of Panama grants to the United States all the rights, power, and authority within the Zone mentioned and described in Article II of this agreement and within the limits of all auxiliary lands and waters mentioned and described in said Article II which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority.”

The Secretary of State, Mr. Hay, held that an examination and analysis of the treaty clearly showed that the claims of Panama were without foundation. If the United States were sovereign of the territory it would possess the right to regulate commerce, establish customs houses, and provide postal facilities. If it be assumed that the “rights, power and authority of sovereignty in and over the Zone” did not give absolute sovereignty, which continued

in Panama, there still remained the provision by which the United States was authorized to exercise the rights, power, and authority of sovereignty "to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority." So far as the limitations to the grants that were set up by Panama were concerned, Mr. Hay contended that the specific purposes enumerated were merely appropriate words of conveyance, and while setting forth the objects of the grant could not be considered as affecting the sovereign rights specifically accorded to the United States, otherwise the revenues derived from the Panama Railroad through its relations with commerce as well as the receipts from taxation of the property transferred to the United States must revert to the Republic of Panama, which would result in an absurd condition of affairs.

Naturally, this conclusion was not satisfactory to Panama, and the claim was then advanced that if the rights of the United States as set forth by the Secretary of State were enforced revenue which properly belonged to Panama would be lost to its treasury, and eventually the Republic would be forced into bankruptcy. With the view of ascertaining if some working agreement could be reached by which the friction that existed between the two Governments on the Isthmus might be eliminated the Secretary of War, Mr. Taft, was sent to confer with the officials of the Republic of Panama.

To the President of the Republic Mr. Taft explained his attitude by announcing that while he was not in position to give up the rights which Secretary Hay had claimed under the treaty, yet the United States had no desire to exercise any power which would not be necessary for the pur-

pose of constructing, maintaining, operating, sanitating, and protecting the canal. As the result of the several conferences that followed, an agreement was reached which was acceptable to both parties.

It was arranged that the executive order fixing the same tariff duties for the Zone as were applicable to the United States should be revoked, and it was agreed that no importations at the terminal canal ports would be permitted except as provided by the treaty, to which were to be added coal and fuel oil for sale to passing ships. Under the treaty all materials and supplies required to carry on the work were to be admitted free of duties; likewise "provisions, medicines, clothing, supplies, and other things necessary and convenient for the officers, employees, workmen, and laborers, in the service and employ of the United States, and for their families." The agreement put a

limitation on the treaty provision by excluding from the benefits of the commissaries established by the Commission all employees and workmen who were natives of tropical countries. In this connection, however, it was stipulated that if the merchants of the Republic of Panama could not supply these laborers, the privilege of the commissaries might be extended to them, and this eventually resulted.

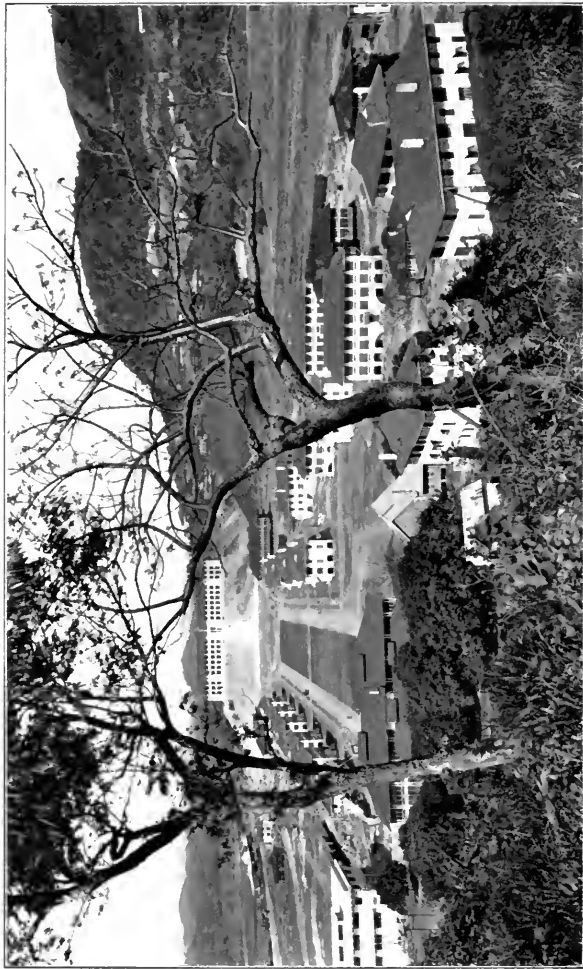
In return, Panama was to reduce its import tax from fifteen to ten per cent and consular fees to sixty per cent of the then existing rates. The postal differences were arranged by agreeing that the Canal Zone postal service should purchase all stamps from the Republic of Panama, paying therefor forty per cent of their face value and crossing them "Canal Zone," while Panama agreed to reduce the rate between Panama and the United States to two cents. Separate ports were

to be maintained in the Canal Zone, but reciprocal arrangements would be effected permitting the use of the facilities of the canal ports by vessels cleared for the adjacent ports of Republic of Panama under such regulations as would not affect the complete administrative, judicial, and police jurisdiction of the two Governments over their respective ports and harbors. Complete and immediate sanitary and quarantine jurisdiction was to be secured to the Zone authorities over the harbors of Colon and Panama. Panama's monetary system was to be put on a gold standard and so maintained, and the provisional geographical delimitations of the cities and harbors of Colon and Panama as arranged between the authorities of the Zone and the Republic of Panama were to remain in force. Citizens of the Republic of Panama residing within the Canal Zone were to have entire freedom of vot-

ing in elections held in the Republic at such points outside of the Zone as might be designated by the authorities of Panama. The United States was to construct, maintain, and conduct, a hospital either in the Canal Zone or in the territory of the Republic, at its option, for the treatment of the insane or of persons afflicted with leprosy, and the indigent sick, and to accept for treatment such persons of these classes as the Republic might request. If the hospital were located in the territory of Panama, requisite land for the purpose was to be furnished without cost to the United States, and the Republic of Panama agreed to contribute and pay to the United States a reasonable daily per capita for each patient entering upon request of the Republic of Panama, to be fixed by the Secretary of War.

This agreement, known as the *modus vivendi*, or the Taft Agreement, was to





New Administration Building and new town of Balboa in foreground



continue in force, subject to the action of the Fifty-eighth Congress, during the construction period of the canal, and it was expressly stipulated that it was "not to be taken as a delimitation, definition, restriction, or restrictive construction, of the rights of either party under the treaty between the United States and the Republic of Panama." The effect of this agreement was to make free ports of the terminals of the canal with respect to all purchases for the canal or its employees other than laborers accustomed to the tropics. On the other hand, the inhabitants of the Zone, in contradistinction to canal employees, paid duty to the Republic of Panama on all merchandise imported direct, and no duties were paid on articles passing from the Republic of Panama to the Canal Zone and vice versa. As a consequence the Zone revenues were depleted by all customs receipts. Again, as the

civil laws within the Zone were those of Panama, the same system of taxation was made effective, and this course of necessity had to be adopted for the mutual benefit and protection of the two interests.

The Commission acting in its legislative capacity provided for the organization of the executive branch of the government, which was to consist of the Governor, Executive Secretary, Treasurer, Auditor, the Departments of Public Health, Revenues, Police, Prisons and Justice, and a Bureau of Education. The Department of Revenues consisted of the Customs Service, which was maintained to protect the interests of the Republic of Panama, the Internal Revenue Service and the Postal Service. The Department of Justice comprised a Prosecuting Attorney and three Deputy Prosecuting Attorneys. The Chief of Police, in charge of the police and prisons, was also marshal for the Supreme

Court and coroner for the Canal Zone; he was assisted by details from the police force, who acted as marshals for the Circuit Courts and performed the duties of coroner when required so to act.

With the boundaries of the Canal Zone fixed, the Commission enacted laws establishing and fixing more definitely the organization of the municipalities. The Canal Zone was subdivided into five portions for this purpose, thereby reducing by one the number of municipalities that had previously existed. The government of each municipality was administered by a Mayor, a Municipal Council of five members, a Municipal Secretary and a Municipal Treasurer, each and all of whom were appointed by the Governor of the Canal Zone subject to the approval of the Commission. The Mayor was held responsible for the execution of the laws, and presided at the meetings of the Municipal

Council, over whose action he possessed the veto power. He was charged with the regulation of the expenses and expenditures of the municipality in accordance with the budget and the accounting regulations. The Secretary kept the record of the meetings of the council and a civil register of births, marriages, and deaths, with their dates; certified to the correctness of all accounts ordered by the Council to be paid from the municipal treasury, and performed such other duties as the Municipal Council might provide or the Governor of the Canal Zone might direct. The Municipal Treasurer received, safeguarded, and disbursed all moneys paid into the municipal treasury from whatever source. The Municipal Council enacted the necessary ordinances for the municipality, but these did not become effective until approved by the Governor. It prepared budgets of receipts and ex-

penditures, imposed taxes within the limits prescribed by law, and made regulations for their collection and disbursement; made appropriations for lawful and needful municipal expenditures, including the construction, repair and maintenance of buildings, sidewalks, streets, highways, and parks, and removed obstructions and encroachments thereon; provided for fire protection and water supply; had charge of the establishment of slaughter houses and markets and regulated them; inspected weights and measures used by vendors and purchasers; established and maintained schools and erected school houses; established, maintained and regulated municipal prisons; established municipal cemeteries, and performed the various other duties that properly belong to municipal affairs.

An organization was provided for a judiciary and laws passed for the exercise

of judicial powers within its territory. The judicial power was vested in a Supreme Court, three Circuit Courts and five Municipal Courts. The Supreme Court consisted of one Chief Justice and two Associate Justices. There was no appeal from the decision of the Supreme Court.

The Canal Zone was divided into three judicial circuits, each presided over by one of the Supreme Court judges. Their jurisdiction was original in all civil cases in which the subject of litigation was not capable of pecuniary estimate; all civil actions which involved the title to or possession of real property, or any interest therein, or the legality of any tax, impost or assessment; all cases in which the value of the property in controversy amounted to one hundred dollars or more; all actions in admiralty and maritime jurisdiction, irrespective of the value of the property in controversy or the amount of the de-

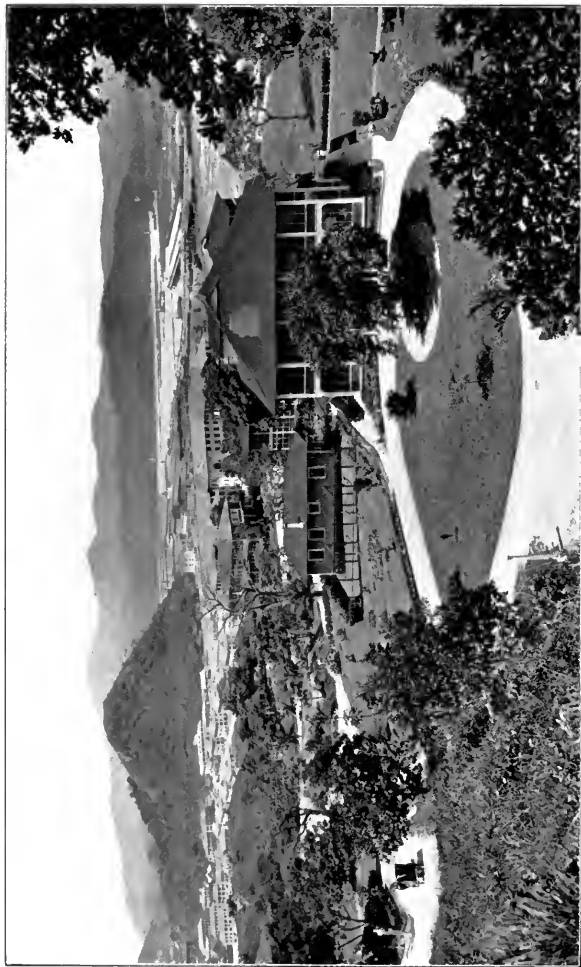


mand; all matters of probate, appointment of guardians, trustees, and receivers; all actions for the annulment of marriage; all cases involving the exercise of eminent domain; all criminal cases in which a penalty of more than thirty days imprisonment or a fine exceeding twenty-five dollars might be imposed; and in all such special cases and proceedings as were not otherwise provided for. Its appellate jurisdiction extended to all cases arising in the municipal and inferior courts in their respective circuits.

A Municipal Court was provided for each of the municipalities into which the Canal Zone was divided. The jurisdiction of the Municipal Courts covered the trial of misdemeanors and offenses arising within their respective municipalities in all cases where the sentence might not exceed by law thirty days imprisonment or a fine of twenty-five dollars; the trial of all

civil actions properly triable within the municipality over which exclusive jurisdiction was not given to the Circuit Courts; and all cases in which the demand, exclusive of interest, or the value of the property in controversy, amounted to less than one hundred dollars. The Municipal Judges were also given jurisdiction over actions for forcible entry into, and unlawful detainer of real estate, irrespective of the amount in controversy. It was made the duty of the Municipal Judges to investigate all felonies committed within their municipalities and to cause the arrest of the offenders and act as examining magistrates in the preliminary examinations.

Provision was made for the necessary clerks and officers of the courts. While the Chief Justice and the Associate Justices of the Supreme Court were appointed by the Commission, the Municipal Judges were appointed by the Governor.



General View of Balboa Heights and Pacific terminals. Entirely new settlement  
built since 1913



The Commission also formulated and prescribed a penal code; but the civil code and those relating to commerce, mining and admiralty were the corresponding codes of the Republic of Panama. To avoid the delays incident to trials in the Panamanian Courts codes of civil and criminal procedure were adopted for the Canal Zone.

The Commission continued to act as a legislative body, modifying laws and enacting new ones to meet changing conditions, until March 4, 1905, when the Fifty-eighth Congress ended its term without providing legislation for the government of the Zone, and also failing to continue the authority granted to the President by the act of April 28, 1904. Though the Commission was deprived thereby of its legislative functions, and the Congress had failed to take them over, the President continued to govern the Canal Zone

through executive orders, which were drafted to meet the various necessities that arose. While he was criticized for this procedure, there was no other course open if the work was to be continued. The Taft Agreement also brought forth much criticism, but Congress was fully advised concerning the matter, and adjourned without taking further action than to provide that all the laws affecting imports and entry of persons into the United States from foreign countries should apply to goods, wares, merchandise and persons coming from the Canal Zone.

For the first year of American control the organization of the government of the Canal Zone presented nothing peculiar other than that its inhabitants lacked the right of franchise. It was self-contained; the Governor or executive had certain functions independent of the legislative branch, the Commission, and the munici-

palities had charge of their own affairs subject to the approval of the Governor.

The Commission of seven imposed by the Spooner Act did not tend to secure harmony and satisfactory results, a condition which impressed the Secretary of War, for, in a report to the President, after his return from the Isthmus, he called attention to the cumbersome and unwieldy condition that resulted from the seven-headed control, and advocated such a change in the organization as would reduce this number, proposing the substitution of an executive committee of three, consisting of the Chairman, the Governor, and the Chief Engineer, as a controlling body, the other members of the Commission acting as an advisory committee. This was made effective by an executive order dated April 1, 1905, which created three executive departments, one of which was to administer and enforce the

laws. All questions, whether of government or construction, were resolved by the Executive Committee, consisting of the heads of the three departments. By this order the government of the Zone became one of executive control. The Chief Engineer and the Governor resided on the Isthmus, and the Chairman of the Commission in Washington; so that the action of the Committee in most cases was the action of two, though all decisions made were submitted to the Chairman.

This continued until November 17, 1906, when a change again was made because the organization was not working satisfactorily. The number of departments was increased, and all of them placed under the direction of the Chairman of the Commission. By this order the administration of the civil government within the Zone was placed under the General Counsel who, residing in





Police Station, Balboa



Washington, exercised the authority formerly vested in the Governor through an Executive Secretary. As a consequence this left the Chief Engineer the only member of the Commission resident on the Isthmus, and during the absence of the Chairman the Chief Engineer was to act for him in all matters which could not be referred to Washington, the action taken in each case to continue in full force until disapproved by the Chairman.

With the intimate relations existing between the construction work and the civil government, the fact that the head of the latter department was in Washington necessitating vexatious delays in handling important matters, it is not surprising that friction existed. It was asserted that the Department of Government, generally, regarded the construction of the canal as of secondary importance and seemed to consider that the main purpose and object

of the work on the Isthmus was to set up a model of American government in the heart of Central America as an object lesson to the South and Central American republics. The head of the Department of Construction and Engineering took the opposite view, and felt that everything should be subordinated to the construction of the canal, even the government. This sufficiently indicated the lack of coordination that existed.

By the resignation of some of the personnel of the Commission early in 1907 another change was made, and a very decided one. While the organization prescribed by the executive order of November 17, 1906, continued in force, the duties of the Chairman and Chief Engineer were consolidated, and subsequently the authority of the Governor or chief executive of the Canal Zone under the existing laws and executive orders

was vested in and was to be exercised by the Chairman of the Commission. The office of the Governor disappeared, and though civil matters were organized into a separate department under one of the Commissioners, all matters of importance were handled by the Chairman, or under instructions from him. All the members of the Commission were required to reside on the Isthmus, and each was placed in charge of a separate department. This was the first attempt to concentrate authority and to bring the Commissioners together as a body in close touch with the work.

At the same time important changes were made in the organization of the civil government of the Zone by the abolition of the municipalities and their various officials. The Zone was divided into four parts, each constituting an administrative district. For each district a tax collector

was appointed, the title indicating the duties of the office, and in addition he represented the former municipality in all litigation affecting municipal property within the district. The Circuit Courts were given jurisdiction over appeals from taxes levied by assessments and the three Circuit Judges were required to sit once a year as a board of equalization. The Municipal Courts gave way to the District Courts, and the number was reduced to four, conforming to the districts, but an additional judge was appointed as senior District Judge, who sat wherever required of him, and once a month presided at a conference of the District Judges for the discussion of matters of common interest pertaining to their office. Public works and improvements in the several districts were placed under a Superintendent of Public Works appointed for the Zone, and to him were assigned charge and di-

rection of slaughter houses and markets, municipal engineering work, paid for from Canal Zone funds, and such other duties of a public character relative to the various districts as might develop. The enactment of ordinances previously invested in the Municipal Councils was assigned to the Isthmian Canal Commission, but such ordinances required the approval of the Secretary of War to become effective.

The change in the organization made in April, 1907, did not entirely eliminate friction; the trouble was inherent in the seven-headed executive which the organic law imposed. Efforts had been made to secure through Congressional action the necessary modification, but without success. President Roosevelt, convinced that only through one-man control could the work be handled satisfactorily, proposed to concentrate all the authority in the Chairman of the Commission, holding him

responsible for the conduct of affairs, if the latter were willing to assume the responsibility; and issued an executive order which, while not in exact accord with the law, secured the end desired. After that date, January 8, 1908, all authority was vested in the Chairman, and though the Commission continued in existence, it exercised no executive authority, but confirmed and ratified such action of the Chairman as might be required, in addition to providing municipal ordinances. This arrangement permitted the subordination of everything, including the Panama Railroad, to the construction of the canal, and resulted in the establishment of an autocratic form of government for the Canal Zone. Laws were changed or new ones made as conditions required by no other formality than an order from the President. Some have designated it a "benevolent despotism." Because the



United States provided furnished quarters for its employees, with lights, fuel and water, free of charge, and through the commissaries supplied them with food-stuffs and clothing, as well as luxuries of various kinds, at practically cost prices, the Socialists have pointed to it as a socialistic community. Beginning with a government which might be termed political, it ended as a government by executive order, controlled by one man answerable only to the President of the United States through the Secretary of War. Such an establishment was not in accord with the principles of democracy and several attempts were made in Congress to secure a change, but without success. Conditions were peculiar, for there was but one object in view—the construction of the canal; had the franchise been introduced, the whole structure would have fallen.

With the change of the Administration in Washington, the Commission seemed to take on new life and an attempt was made to revive its authority, but the effort was not successful. While there was probably truth in the assertion made at that time that the Chairman had exceeded his authority and usurped the prerogatives of the Commission, the end not only justified the means but could have been accomplished in no other way.

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## II

When the original legislation authorizing the President of the United States to construct a canal was enacted, not only was the location of the canal undetermined but the conditions that would surround its construction were unknown. The Spooner Act as first drawn left the entire matter in the hands of the President, but the commission idea was interjected, and as it finally became a law this form of organization was to continue until the completion of the canal. No provision was made, however, for its operation and maintenance after it should be ready for the use of commerce. As the defects of the prescribed organization developed, Congress made attempts to correct them and also

in general terms to provide for the future; in each instance the reorganization bill which was passed by the lower house of each Congress was never enacted.

As the work advanced a stage was reached when commerce began to seek information concerning the tolls and the regulations that would be prescribed governing the passage of vessels. Furthermore, economical administration required that a definite future policy should be outlined toward which to work, so that the then existing force might be available for moulding an organization to meet the needs of operation and maintenance. Consequently, the necessity for legislation to take care of the future of the canal became apparent, and the committees of both houses of Congress having charge of canal matters undertook the consideration of the needed legislation during the winter of 1911-12. The committees separately

visited the Isthmus, examined into the existing conditions, and conducted hearings at which the views of the various canal officials were ascertained. In this way considerable data were procured, though with many men of many minds, diverging opinions were developed even in the essentials.

The Zone was granted to the United States for specific purposes—"the construction, maintenance, operation, sanitation and protection of a canal," and while everything had been subordinated to the first of these, with the end of the construction work in sight, and the protection of the canal omitted to be dealt with separately, the maintenance and operation became of paramount importance; so that the most pressing matter requiring determination was the plan of administration to be adopted for these purposes, including the government of the Canal Zone

with its judicial system. The scheme of administration was somewhat dependent upon the form of government that was to be established, and, naturally, the region that was to be controlled or governed together with the population occupying it was the leading consideration of this part of the problem.

The general conception of Panama is that it is low and marshy, but this is true only for the valleys of the lower Chagres and Rio Grande and their tributaries. In the former case the lowlands extend for a distance of about thirteen miles from the shores of Limon Bay, where the hills enclosing the valley converge and increase in height to the continental divide, where they attain an elevation of 500 to 1,000 feet above sea level, while on the Pacific side the extent of lowlands is much less. The hills are in large measure detached mounds with steep slopes; the valleys are

narrow and both are covered with dense jungle. Beyond the river bottoms, which the artificial lakes would cover completely, there is very little land suitable for agricultural purposes, except along the Pacific slope, and even here very few of the temperate zone foodstuffs can be grown.

In the early days complaint of food supplies was the rule. Until adequate cold storage could be supplied on shore and in the ships of the Panama Railroad, only canned goods and native beef could be furnished. The country could supply nothing except cattle, and these only in limited numbers; the natives were not given to tilling the soil beyond the extent of supplying their own needs in the form of a few bananas and yams, so that for furnishing foodstuffs for the negro laborers recourse was had to the West India Islands and adjacent more productive countries. Even from these sources the

demands of the commissaries and hotels which were established for the benefit of the employees could not be met, and no reliance could be placed on them, consequently the large bulk of the foodstuffs had to be shipped from the United States and European markets. Of course the complaints were not long in reaching the ears of the authorities at Washington and investigations were the order of the day. The result was always the same—criticism of existing conditions and recommendations that means be taken to supply the people of the Zone with the fruit and fresh vegetables to which they had been accustomed at home. It was difficult to carry out the recommendations until ample shipping facilities equipped for the transportation of such supplies were provided, but every effort was made to improve the conditions. An agriculturist was employed and vegetable gardens



started, seeds were procured and distributed among the natives, with the hope of getting them interested, an agricultural survey was begun, and the matter was brought to the attention of Congress which passed a law permitting the leasing of lands for agricultural purposes,—all with the hope that something might be done toward securing a supply of suitable vegetables.

For the truck gardens the most suitable lands in the vicinity of the largest settlements of canal workers were selected, and cultivated for two years, when they were abandoned. The excessive rains during eight to nine months of the year, followed by three or four months of drought, gave too much water during the greater part of the year and too little for the rest. Ants and other insects played havoc with the crops that had not rotted. The expense incurred was prohibitive, and as

the cost of the canal had been fixed by the bond issue and there was a desire to complete it within the estimates, agriculture had to be abandoned. The natives had been induced to plant the seeds distributed among them, but even in the rare cases in which the patches were looked after the crops were failures so far as securing any supply was concerned. The agricultural survey was not encouraging except in so far as showing that certain tropical fruits could be produced; and no hopes were offered which could be used as an inducement to the American farmer to take up lands, for no assurance could be given that he would be able to make a living. The survey did show, however, that if Congress would appropriate eight to ten thousand dollars per annum for experimentation in treatment of the soil, special varieties of temperate zone vegetables might be grown eventually, but that it



Street scene new town of Balboa



would not be possible to farm on the scale and in the way that such operations were carried on in the United States. As Congress failed to make any such appropriation no experiments were conducted. Plantations for rubber, bananas and cocoa had been started by various companies prior to American occupation, but were not successful. Cocoanuts thrive along the coast if they can be kept free from blight, but not in the interior, and lands for this purpose are limited.

No one came forward to take advantage of the opportunity which the law gave for leasing lands. The framers of the bill did not consider that the United States could give title in fee to any of the lands of the Zone, because should the strip fail at any time to be used for the specific purposes mentioned in the grant the land must revert to the Republic of Panama; consequently the time limit for the leases was

fixed at twenty-five years. In the second place it was not possible to foresee just what lands might be needed for canal purposes, so that the leases were to be made with the stipulation that they were terminable at the pleasure of the Canal Zone Government upon payment for the improvements. Under the circumstances, therefore, it did not seem possible, at least for years, that a self-supporting American colony could be established within the Zone, so far as agricultural pursuits were concerned. Even eventually, the American could not be assured actual ownership of the land, though the time limit of the lease might be extended. Finally, the wage scale on the work promised better financial results than could be realized from farming. The location of the Zone with respect to the Republic of Panama made it necessary to observe the same system of taxation and to enforce the same

import duties as within the Republic, or there would be constant friction and the Republic's revenues would be depleted.

There is no timber of any value within the Zone nor have any deposits of any kind been discovered which would warrant manufacturing establishments. Whatever business might develop in the Zone in connection with the canal would be in the vicinity of the terminal ports, and the question of making provision for an urban population was considered. So long as the Taft Agreement continued in force any business that might develop other than in coal and fuel oil for passing ships would be subject to the import duties of the Republic of Panama, and until the needs of the canal were fully developed it would be difficult to determine just what lands should be set aside for the purpose. Because of the uncertainties, no inducements could be offered and it seemed best

that this matter be left for the future to develop and solve. For one, I did not care to see a population of Panamanians or West Indian negroes occupying the land, for these are non-productive, thriftless and indolent. They would congregate in small settlements, and the cost of sanitation and government would be increased materially, through police, waterworks, sewers, roads, fire protection and schools.

✓ In 1910 Congress voted in favor of fortifying the canal and, subsequently, of having a garrison permanently located within the Zone. These defenses consist of seacoast fortifications for the protection of the entrances against naval attack, and land defenses around the locks, the most vulnerable features of the canal, against any force that might be landed from an attacking fleet for raiding purposes. The territory between the fortifications and



the works they are designed to protect should not be in the possession of any but Americans. All of the arguments seemed to point to the desirability of depopulating the Canal Zone, thereby decreasing the cost of civil government and sanitation and increasing the protection of the canal. This was therefore advocated.

In opposition, it was asserted that Americans should be permitted to take up land, provision being made for homesteading it as an inducement, so as to grow such fruits and vegetables as could be produced by the soil, the assumption being that they would take up land, live in communities along the line of the canal, and have the farms or plantations worked by West Indian negroes; the general idea amounted to opening up the land to "gentlemen farmers." It was further proposed that to these communities be given the usual form of municipal or city governments and to

the settlers the right of franchise. It was argued that such a course would result in clearing away the jungle and, by making the country more open, assist in the military protection of the canal and the sanitation of the Zone. Again, by making the communities and settlements on the plantations responsible for their own sanitation there would be no increase in the cost to the United States and the health conditions would be materially improved. By such an arrangement a large population of negroes would be left within the Zone, increasing the cost of government. Furthermore, discontent would result, for under the treaty of 1903 American settlers would be deprived of the benefit of the commissaries and by reason of the duties payable to the Republic of Panama their cost of living would materially exceed that of employees of the canal. With the jungle, large bodies could not be moved

with ease and rapidity, and though small parties might work their way through to the locks, they could do no damage if the defense was alive to its duties. Generally speaking, the jungle would give greater protection.

For eight years the United States had been looking after the sanitation of the cities of Colon and Panama, paying for the cleaning of the streets and garbage disposal of the former and contributing \$10,000 for similar work in the latter, with no hope of being relieved of the expense; it could not be expected that the American communities would be required to do more than had been and probably would be demanded of the Panamanians. Throughout the Zone privately claimed lands were in the hands of a few who leased out small tracts to the natives of the Republic or to West Indians, and no attempt at sanitation had ever been made or required in the

negro settlements that resulted. It could not be assumed therefore that the population would pay any more attention to sanitation than it had in the past, and any cost involved, including the cost of inspection, would eventually be borne by the United States if such work were undertaken. The argument that the clearing which would result by populating the Zone, even assuming that the entire Zone were freed from jungle, would remove the breeding places of mosquitoes, had but little force or merit, as during the entire construction period the clearings had been confined to the immediate vicinity of the settlements occupied by Americans; little work of this kind had been done around the aggregations of native huts even when in proximity to American towns, and nothing at all where the natives and others were living in the brush. There is nothing like an object lesson, however,

and a trip through the native settlements adjacent to the towns of Empire and Culebra convinced the Congressional committees of the desirability of ridding the Zone of the filthy conditions that were found, for while filth may not be the cause of disease, to Americans generally it is not pleasant.

While everything had been subordinated to construction the courts had been unhampered in their actions. It is true that in some instances the courts had been requested to arrange their sessions so as to keep the men away from their work as little as possible, and in others where the punishment did not seem to fit the crime administrative action was taken in addition, but such cases were rare and the action was considered necessary for the good of the work or for the benefit of the majority. Again some few cases never came to trial for various reasons, generally be-

cause of the hardship that would be inflicted on others who were not implicated, or to avoid a scandal. In the reorganization that was under consideration an independent judiciary was advocated; a change was required in the existing system, for there were too many courts and too many judges. It was proposed that there should be one court of general jurisdiction presided over by a judge to be appointed by the President with the advice and consent of the Senate, and that appeals should be authorized from this court's rulings to some appellate court in the United States, preferably the Circuit Court of Appeals at New Orleans, and in certain cases, to the Supreme Court.

Following the laws in force at the time of American occupation, jury trials were not provided, notwithstanding the fact that capital punishment could be inflicted. In 1907 a British subject from the West

Indies was sentenced to be hanged for murder, the first case of the kind that had arisen. An appeal was taken to the Supreme Court of the Canal Zone, and the principal defense of the defendant was that he had been denied trial by a jury, to which he was entitled under the Constitution of the United States. This the court denied, sustaining the action of the lower court, and the question was taken up by the British Ambassador at Washington, with the result that the Chief Justice of the Supreme Court of the United States granted a writ of error. At the hearings which followed it was contended on behalf of the prisoner that as the Zone belonged to the United States and was part of its territory the Constitution extended over the government and its citizens had its protection, consequently the Federal Government could exercise no power over the personal liberty or prop-

erty of an individual beyond what the Constitution conferred, nor deny any rights which the Constitution reserved, including that of a jury trial. The Supreme Court of the United States dismissed the writ for want of jurisdiction and the sentence was executed.

As might have been expected, the case brought on considerable discussion concerning conditions on the Isthmus, and the President, by executive order, directed that in all criminal prosecutions in the Canal Zone wherein the penalty of death or imprisonment for life might be inflicted the accused should enjoy the right of trial by an impartial jury of the district in which the crime was committed. In a community like that on the Isthmus the difficulty was to secure an impartial jury, and the result was that even in flagrant cases it was not possible to convict an American.

Under the new establishment it was not



considered advisable to extend trial by jury beyond the then existing scope. If the Zone were depopulated the juries would be made up of American employees, and whenever a capital case came to trial it would necessitate the temporary removal of a considerable number of men from their employment to the detriment of the work. Experience had shown that Americans were loath to convict a fellow-citizen upon the testimony of non-Americans, and such a condition was likely to bring complaints from foreign countries. The jury system is applicable to a settled, established community but not to a locality where the population is constantly shifting as was the case during the construction period and would be the case, though perhaps to a less extent, during the operating period. By allowing appeals to some court in the United States in all felony cases the rights of the individual

would be safeguarded even though jury trials were not allowed. If the Zone were not depopulated it might be possible to secure a greater number of Americans for jury duty, but the other objection to extending the system would obtain, and so far as the natives were concerned, they were not accorded such trials under their own Government.

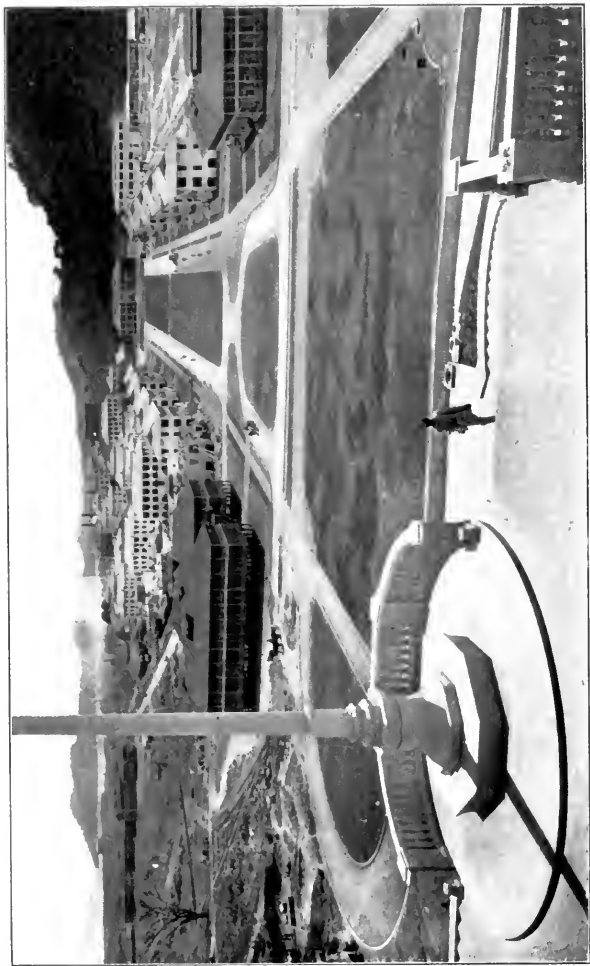
The question of the extradition of persons accused of crime had been a rather perplexing one at times, and it was thought that some provision should be made therefor. It had been held that a fugitive from the Canal Zone to some foreign country could be returned with the assistance of the Department of State, since the Zone was under the jurisdiction of the United States, and the existing extradition treaties between the United States and foreign countries would take care of such cases. As between the Canal

Zone and States of the Union there was no law governing and consequently no legal means of securing the return of any person accused of crime, though such fugitives could be sent from the Canal Zone under the executive order authorizing the deportation of undesirables, but this would not necessarily result in returning them to the localities where they were wanted.

At the time of the adoption of the lock type of canal great stress was laid by the advocates of the sea level plan on the ease with which the canal could be crippled by a ship ramming the gates. In the design and construction of the locks every precaution was taken to reduce this danger to a minimum, and arrangements were made by which ships could be towed through the locks. Greater security could be obtained if, in addition, the force at the locks could take complete control of

vessels from the time they reached the locks until they had been passed entirely through, but in order to do this authority must be had to pay any damages that might be done to the ship while such control passed from the ship's crew to the lock force; legislation to this end was sought.

When in 1910 it was decided to fortify the canal the navy members of the Fortification Board expressed a desire for dry docks, machine shops, and coaling plants, considering these facilities as necessary adjuncts to a proper defense. There was no question that these facilities would be useful for the canal. During the progress of construction economies had been effected, with the result that at the time it seemed more than probable that the available balance remaining from the estimated cost for completing the work would be ample to provide a dry dock and machine



New town of Balboa from Administration Building



shops, with coaling pockets at both terminals of the canal. If but one dry dock were built the navy men desired that it be constructed on the Pacific side, as the need for one there was more urgent than at the Atlantic end. The navy also considered that there should be sufficient bunker space to keep on hand for immediate use 200,000 tons of coal on the Atlantic side and 100,000 tons on the Pacific side, with a possible increase over these amounts of fifty per cent.

Applications had been received from various sources for concessions to establish coal bunkers on the canal for the benefit of shipping, but as the law permitted the leasing of land only for agricultural purposes none of the applications could be considered. The information at hand led to the conclusion that American coal interests had not been able to secure a foothold in any of the South American ports,

and it seemed possible that if coal were supplied to shipping by private interests a combination might be made resulting in a monopoly which would be detrimental to the interests of the canal. With the large amount of coal that would be kept in storage for the navy which might not be drawn on to any great extent except in case of war or threatened hostilities, the thought occurred that these piles could be utilized for the benefit of shipping using the canal, or they could be increased with this object in view. Assuming that Congress would authorize the United States to go into commercial business, a way would be secured for regulating the prices at which coal would be sold by other interests, and prevent the formation of a combination or trust.

While there was as yet no authority for the construction of the dry dock and coal-ing stations, certain facilities already ex-



isted which if utilized would add to the attractiveness of the Panama route for commerce, and there was no apparent reason why, as in the case of coal, they should not be turned to account. The commissaries of the Panama Railroad had been constructed to furnish foodstuffs of all kinds and all varieties of wearing apparel and household furnishings for a force of employees which at the height of the work had totaled nearly 50,000 men. In connection with its commissaries, cold storage and manufacturing plants, including laundry, ice and bakery, and a wholesale warehouse for commissary supplies, ample for the needs of the maximum working force, had been erected by the Panama Railroad and were in full operation. As from time to time the necessity for enlarging these facilities had arisen the capacities had been increased by the addition of another unit in each instance,

which permitted a piecemeal closing down if necessary to suit the demands, thereby avoiding useless expense in keeping each establishment in full operation as the force was reduced. In addition, the storehouses of the Commission contained all sorts of construction supplies for all kinds of work including repair parts and fittings for the fleet of dredges and tugs in the service.

The plants and supplies must necessarily be maintained and operated for the forces employed on the canal and for the troops stationed within the Zone, but not to their fullest capacities. Ships using the canal must travel long distances to reach it and would be in need of coal and other supplies. Shipping could not depend on the merchants of Colon and Panama, and some provision should be made for a reliable source of supply, together with some assurance of reasonable cost. Private capital might be interested sufficiently to

undertake the erection and maintenance of the necessary structures for the conduct of such business, but legislation would be necessary to grant the concessions, and the Taft Agreement would require abrogation before anything further could be done. With the United States already in possession of the requisite facilities, there seemed no good reason why the Government should not undertake the business itself. Estimates were prepared and appropriations asked to undertake the construction of the dry dock, shops, coaling stations, and fuel oil tanks, these to be constructed as adjuncts to the canal. In addition, authority was requested for the sale of coal, fuel oil, and supplies of all kinds to ships using the canal. It was not intended that the United States should create a monopoly—private interests should be permitted to engage in similar business when all conditions permitted,

though naturally the Government would regulate prices. It was urged that such a course would invite traffic, for shipping interests would know that they could replenish their stores and bunkers and have any repairs made at reasonable costs.

A very important question requiring settlement was the organization to be provided for carrying on what remained of the construction and for the operation and maintenance of the canal. In the hearings before the Congressional Committee no less than four different establishments were proposed: a military government over all; a civil government in the form of an organized political institution; a commission government; and, finally, the vesting of complete control in the President of the United States who would exercise it through an administrator appointed to have charge of affairs on the Isthmus.

A relatively large force of troops must be assigned for duty in order to protect the canal, and if a military government were established, the army officer placed in charge of both the troops and the canal would necessarily have very high rank, consequently the number of men available for the purpose would be very small. The President might not always find it easy to detail a man with the qualifications of an officer of high rank and at the same time possessing the requisite ability to administer the canal. The canal is a civil achievement, and to maintain and operate it successfully the person in charge would not necessarily have to have a military training, but that of an engineer. As in the United States in time of peace, the military should be subordinated to the civil, and everything on the Isthmus should be considered an adjunct to the canal. The commander of the troops

should be free to work out the military problems in anticipation of hostilities, and should not be hampered with duties for which he has had no special training and has as a rule no fitness.

If the policy of depopulating the Zone were adopted there would remain only the operatives of the canal and its adjuncts, the Panama Railroad, and the military force. Of these, the troops would be under military control when within their camps or posts, and there would be left a comparatively small force to be controlled, so that the governmental functions of police, fire protection, post offices and schools would be a mere bagatelle, not sufficient to warrant the creation of a separate department. The inadvisability of introducing the franchise under such circumstances is apparent. If, however, the population of the Zone were to remain and the authority continued for the leasing of

lands, thereby inviting other settlers, it must be remembered that we have, after all is said and done, only a right of way for a canal; its operation and maintenance constitute an administrative problem which ought not to be encumbered with political problems, and certainly not be subordinated to them. The theory that we should avail ourselves of the opportunity to impress upon the Central and South Americans the advantages of our system of government sounds well, but one seldom learns much from those whose customs, manners, training and thought are diametrically opposite and who are regarded with feelings of hatred and antagonism. The political government which had been established originally had been found too cumbersome and had been abandoned; to re-create the municipalities or districts, each with its separate Mayor and Council, would not only be a step

backward but would introduce an expense which was not warranted.

The commission form of administration would result in extending a law which had been found faulty and productive of friction to the detriment of the work. A board, committee, or commission is an irresponsible body and usually conforms fully to the definition of a board extant in the military service, in that "it is long, narrow, and wooden." Either one of the number having the strongest personality or character will dominate the commission, in which case there results the one-man control, otherwise it will be vacillating and weak. In the case at hand a commission of three was proposed, each in charge of a department of the work; the functions of civil administration were to have one head, sanitation another, and engineering a third, the latter to include the operation and maintenance of the canal, thus revert-



ing to the conditions that existed through the executive order of April 1, 1905. Such a division could no more eliminate friction in the future administration of the canal than it had in the past, for there would be the same overlapping of duties and the same desire to make each department the most important one in the organization.

The problem was one of administration just as it had been in the past, and that form should be adopted which would result in the most efficient management of the canal. The Spooner Act authorized the President to construct the canal and had placed all the power in his hands, limiting him only in the method of exercising it. In the same way, the President should be authorized to complete, maintain, operate, sanitize and protect it, and the only point at issue was the method by which these objects could best be secured. The

method imposed for construction had proved a failure; it had been necessary to evade the law to secure satisfactory results, by concentrating and fixing responsibility, and in the light of past experience the President should be authorized to exercise his authority through a responsible head—for “councils of war never fight.”

Of course, Congress could take charge and legislate for the canal, but under such conditions prompt action was not possible, and such a solution could only cause delay and might result in serious trouble. With the method of administration proposed the system of executive government fitted in admirably, and it should be continued. The only objection that could be raised was the great authority that it would give to the President, but Congress has already delegated very large and broad powers to territorial legislators, and in principle there is no difference in dele-

gating legislative authority to fifty or one hundred men or to one man; the proposition is the same. The problems would all be administrative, and the legislation, therefore, would be administrative and not political in its character.

When the Canal Act of 1912 was first drafted it provided for the continuation of the Isthmian Canal Commission until the completion of construction work, at which time the President by executive order should announce the canal ready for commerce, after which he was authorized to govern and operate it, or cause it to be governed and operated through a Governor. It was expected that the canal would be ready for commerce in advance of its completion, and as from the very nature of things construction work in some form or other would be in progress for some time to come, it would be difficult to fix any date for the termination of the con-

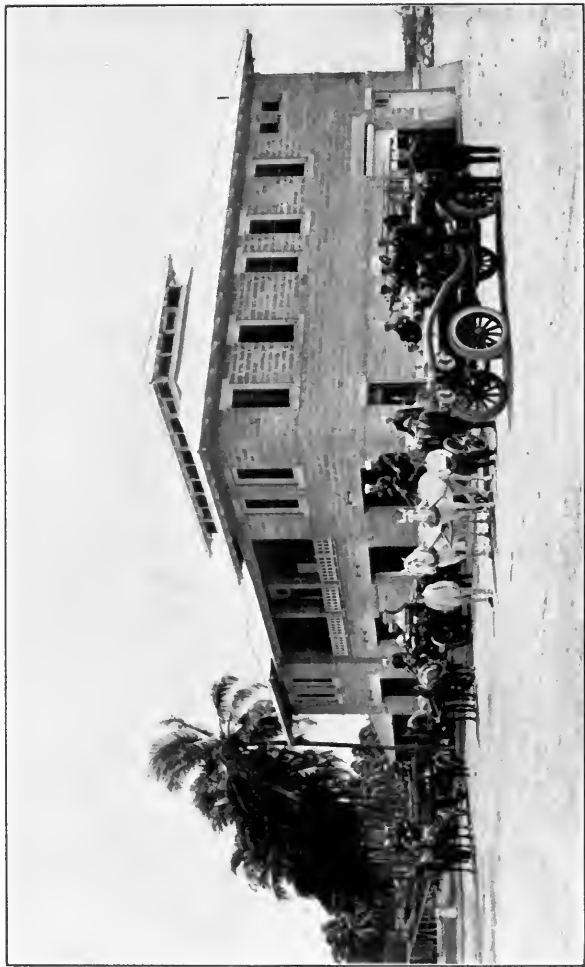
struction period. Unless provision were made for its operation shipping could not utilize it even though it were ready for such use. The title of "Governor" did not seem appropriate for it would tend to give too much prominence to civil affairs when in reality the operation of the canal should be paramount. On the other hand it was feared that if some other title were used, such as "Director" or "General Superintendent," it might give the President the opportunity again to appoint for political reasons some one at the head of a department of civil affairs, and this it was considered desirable to avoid. The clause was modified with respect to the Commission, but not in reference to the Governor. Opposition developed in the Senate committee, where the commission form seemed to have the preference, but on the floor the one-man control was substituted.

In the law that was finally enacted ef-

fective August 24, 1912, known as the Panama Canal Act, the President was authorized to discontinue by executive order the Isthmian Canal Commission when in his judgment the construction of the canal had advanced sufficiently to render a continuance of its services unnecessary, and thereafter "to complete, govern, and operate the Panama Canal and govern the Canal Zone, or cause them to be completed, governed, and operated, through a Governor of the Panama Canal, and such other persons as he may deem competent to discharge the various duties connected with the completion, care, maintenance, sanitation, operation, government, and protection of the canal and Canal Zone." In addition, the Governor is given official control and jurisdiction over the Canal Zone, and is to perform all duties in connection with the civil government of the Zone, which is to be held and

governed as an adjunct to the canal. To this end "all existing laws of the Canal Zone referring to the civil Governor or the civil administration of the Canal Zone shall be applicable to the Governor of the Panama Canal, who shall perform all such executive and administrative duties required by existing law."

Notwithstanding the opposition, the act provides for the depopulation of the Canal Zone by authorizing the President "to declare by executive order that all land and land under water within the limits of the Canal Zone is necessary for the construction, maintenance, operation, sanitation, or protection of the Panama Canal, and to extinguish, by agreement when advisable, all claims and titles of adverse claimants and occupants." The opposition came from a misconception of existing conditions, and was based on the idea that after spending so much time and



Fire Station and Apparatus, Cristobal





money in the sanitation of the Canal Zone it should not be allowed to return to jungle. As a matter of fact, of the fifty square miles or more within the limits of the Zone, less than 3,000 acres were kept clear for sanitary purposes, the remainder of the strip remaining in its original state, except where the clearing was made for construction work or for huts put up by natives.

While no provision is made specifically for the deportation of undesirables, the act ratifies and confirms as valid and binding all "laws, orders, regulations and ordinances adopted and promulgated in the Canal Zone by order of the President," so that the deportation order is continued in force. Furthermore, the Governor is given the right "to make such rules and regulations, subject to the approval of the President, touching the right of any person to remain upon or pass over

any part of the Canal Zone, as may be necessary," and violation of such rules is made a misdemeanor punishable by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year, or both.

The judicial system established consists of one District Court for the Zone with two subdivisions, one at Balboa and the other at Cristobal, presided over by one District Judge appointed for a term of four years by the President with the advice and consent of the Senate. A jury trial is given in any criminal case or civil case at law on the demand of either party. The law also provides for the appointment of a marshal and a District Attorney who is also the legal adviser of the Governor on questions touching the operation of the canal and the administration of civil affairs; these officials are appointed by the President with the advice and consent of

the Senate, for terms of four years each. The President is to determine what towns are to exist in the Canal Zone and to divide the Zone into subdivisions, and in each town a Magistrate's Court is to be established with exclusive original jurisdiction of all civil cases in which the sum involved does not exceed three hundred dollars, and all criminal cases in which the punishment shall not exceed a fine of one hundred dollars or imprisonment not exceeding thirty days, or both. The business of these courts is conducted by magistrates and constables appointed by the Governor for terms of four years.

To give the lock forces complete control of the vessels during their transit of the locks, the law provides for the adjustment by agreement and the prompt payment of claims for injuries to vessels while in charge of the canal authorities. In case of disagreement suit can be brought against

the Governor in the courts of the Canal Zone.

The extradition of persons accused of crime is made in accordance with the laws and treaties in force in the United States, and all laws relating to the rendition of fugitives from justice as between the several States and Territories of the United States are extended to and are in force in the Canal Zone, for which purpose, and this purpose only, the Canal Zone is considered and treated as territory of the United States.

The President is authorized to build and maintain dry docks, shops, coaling stations, wharves, and other facilities, for providing coal and other materials to vessels of the Government, and incidentally for supplying ships with such necessities, at reasonable prices, as they may require.

In case of war in which the United States shall be engaged, or when war is

imminent, the President designates an officer of the army to assume control, and his authority extends over the operation of the canal and the government of the Canal Zone. In short, martial law is declared, and the Governor becomes subject to the order and direction of the military commander.

The result of this legislation is the creation of an establishment the main function of which is the operation and maintenance of the canal, in connection with which is a bureau or subdivision of civil affairs sufficient for the government of the force engaged on the work, and of such others as might continue residents of the Zone until the depopulation is effected. While it still continues as a government by executive order it differs from the one in effect during the construction period in that the President is not permitted to change or in any way modify the orders

already in effect, this necessitating action by Congress. The system in effect during construction rested on the executive order of President Roosevelt, whereas the new conditions are founded on law. In the application of the law an engineer was advocated for the position of Governor, for if the canal is properly maintained it will be relatively easy of operation, and for proper maintenance an engineer is necessary. When President Roosevelt turned the canal over to the officers of the Corps of Engineers he did it for two reasons: one was that an army officer could not resign, and the other was that continuity in office would be secured. For the same reasons it was considered advisable that an engineer officer of the army be placed in charge, with an assistant competent to replace him. To the Corps of Engineers are entrusted the canals in the United States for construction, operation and

maintenance, so that they have experience, and their military duties fit them for duty in connection with the defense of the canal in time of war. Such an appointment to the position of Governor did not deprive the Canal Zone of a civil government, and in no respect was the form changed when the reorganization was made effective on April 1, 1914; it continued what had been in effect since April 1, 1905—a government by executive order.





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